

QUICK GUIDE ON LAND OCCUPATION FOR LANDOWNERS

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Introduction

It is crucial that all landowners and persons in charge of land need to know what they have to do in the event of a land invasion. This document is a summary of the most important precautions and proposed actions. Due to complex legislation, it is important to seek legal advice from a practising legal practitioner as soon as squatters start occupying a piece of land.

Starting point

Individuals have various rights and means to protect their property rights. In practice, however, it becomes difficult to practice all these rights as an individual. This document is written from the perspective that there should be joint action by individuals within the community; in other words, property rights can be protected by an organised community structure. Practical guidelines on how this can be done, are set out in this document.

Prevention

It is easier and cheaper to prevent land occupation than to engage in lengthy legal proceedings for eviction. The following may help:

1. Get involved with your local AfriForum structure and/or security company.
2. Be alert and aware of everything that happens on your property.
3. Patrol the area and ask the neighbourhood watch or security company to be on the lookout for new or unfamiliar structures.
4. If workers or occupants are living on your property, get as much information about them as possible (for example, name lists and ID copies) so that people who do not belong there, can be easily identified.
5. Apply strict access control. Do not let strangers use your property as a thoroughfare.
6. It is important to build a good relationship with the local office of the South African Police Service (SAPS). Also get involved with your local neighbourhood watch or community policing forum (CPF).
7. If you cannot be on your property for a period of time, make alternative arrangements for supervision, for example with your neighbourhood watch or security company. Also give a power of attorney (attached hereto) to your neighbours or someone you trust. With the power of attorney, the appointed person can lay charges and institute legal proceedings on your behalf. Do not make it widely known that you will be out of town for a certain period of time.
8. It is important to keep a record of and to take photos of unknown persons and vehicles in the area. Also state the date, time and place where the persons or vehicles were noted. Inform your local neighbourhood watch or security company.
9. Lodge complaints with the police in terms of the Trespass Act, 1959 (Act 6 of 1959) against all unlawful trespassers.
 - Attached is an example of an affidavit regarding trespassing that can be submitted at the police station.
10. Make sure that you get a proof of receipt, with the officer's rank, name and badge number, when you submit the affidavit.
11. Join neighbourhood watches, farm watches and AfriForum initiatives for safety. Make sure you are involved in regional security structures, regardless of the organisation.



Safety first

Remember that your safety always comes first. You should avoid conflict as far as possible. If you become aware of a land invasion, the police, neighbourhood watch, CPF and private security must be notified immediately, and charges must be laid at the nearest police station. Communication should preferably be done in writing, so that facts cannot be denied later. Complaints should be laid at your nearest police station as soon as possible. Also contact your neighbours, any existing security structures as well as AfriForum. Lock all gates on the premises and take pictures of the locks. Patrol the area.

“Eviction” with or without a court order¹

Any trespasser must be arrested, unless he/she has undisturbed² occupation or a legal reason to be on the property (in terms of the Trespass Act). The owner or the person in charge of property must lodge a complaint with the police as soon as possible. If the trespasser has undisturbed occupation, he/she may not be evicted from housing without a court order.

If no-one is living in the structure, it may be demolished immediately, before being occupied. Call your nearest neighbourhood watch or security company for assistance and witnessing. Building materials and content should not be damaged, and an inventory of it must also be kept. It would be wise to hand over the inventory to the police (use the SAP13 form). It is essential to take photos and videos of the entire process, to later serve as evidence if a dispute arises.³

The police

The police are supposed to investigate any crime. In practice, however, they will often refuse to get involved in land invasions, because of the political nature of the crime. Insist on submitting complaints of trespassing and possibly also complaints of damage to property and violations of the Fencing Act, 1963 (Act 31 of 1963). Complaints of public violence may also be a possibility.

Get other people to accompany you to the police station and to be witnesses. Insist on seeing the station commander if the officers are unhelpful. Submit complaints to the Independent Complaints Directorate (ICD) if complaints are not taken or investigated by the police. It is important that you are able to identify the unhelpful officials.

Private person's arresting capability

A private person may carry out arrests if a Schedule 1 crime is (Schedule 1 of the Criminal Procedure Act of 1977) committed in his/her presence. It is advisable to immediately call the police, neighbourhood watch and/or security company and to have them available when action is taken. Once again, it must be done in a responsible manner in group context. It is important to do this with as little violence as possible and to hand over the person to the police as soon as possible. It is advisable to have witnesses present at any arrest. Land invasion and trespassing for this purpose is a Schedule 1 offence.

The Criminal Procedure Act, 1977 (Act 51 of 1977)

a. Manner and effect of arrest (Section 39)

During the arrest, the person who is being arrested must be touched physically to avoid any confusion about who is being arrested, unless the person voluntarily subjects to arrest.

The arrested person must be informed immediately about the reason for the arrest and if a warrant is issued, he/she must get a copy of it.

If these steps were followed, the person is in lawful custody and is to remain in custody until he/she is released legally.

b. Arrest by private persons without a warrant (Section 42)

Any private person may, without a warrant, arrest any person who:

- i. in the presence of the arrestor commits a crime or attempts to commit a crime, or for good reason is suspected to have committed a crime, as referred to in Schedule 1;
- ii. apparently had committed a crime, presumably had escaped from lawful custody and is lawfully being pursued by another person;
- iii. committed a crime in terms of a law authorising a private person to perform an arrest for that crime without a warrant (e.g. the Stock Theft Act, 1959 (Act 57 of 1959)); and
- iv. was involved in a fight that was witnessed by the arrestor (the Prevention of Public Violence and Intimidation Act, 1991 (Act 139 of 1991)).

1. Paragraph 6 of the SAPS's document *Evictions from farming land: Operational guidelines for members of the South African Police Service*.

2. *Mbangi and Others vs Dobsonville City Council* 1991(2) SA 330(W).

3. Can also be handled by placing a newspaper advertisement and requesting that property be collected within 21 days and that, by failure, the owner will take possession thereof. An example is when a vehicle has been standing on your premises for a long time. If the value amounts to more than R300 000, an auction must be held.

Any private person may pursue other person as defined in subsection 1(a) above without a warrant and may try to apprehend him/her. Any third person informed of the reason for the pursuit and arrest, may participate without a warrant.

The owner, legal tenant or manager of a premises where a crime is committed (Schedule 1), may pursue and arrest the suspect without a warrant. Any third person who was informed about the crime may participate in the pursuit and arrest without a warrant.

c. Use of force (Section 49)

Any person attempting to perform a legal arrest, may use such force as is necessary if the suspect resists, on the following conditions:

- i. The suspect should know that you are attempting to arrest him legally.
- ii. The violence must be immediately necessary to prevent escape and injury.
- iii. The violence may not be more than what is immediately necessary.
- iv. You will have to prove that serious immediate danger to yourself or others existed.
- v. You will have to prove that you have met all these conditions.

Trespassers who have already taken occupation

If the invaders have already moved in, in other words if they are enjoying undisturbed occupation, they are still trespassing, which is a crime.

In such a case it is unwise to carry out arrests yourself, because the invaders will try to make out a case of eviction without a court order. Pressure must be put on the police to follow up on the complaints that have already been submitted. If invaders have already moved in, an eviction order must be obtained from a court as soon as possible.

Occupation of public land

It is a fact that public land such as parks and cemeteries are occupied. In such circumstances, a member of the public may not break down the structures. The designated route to follow is to lay charges with the police and the municipality. The municipality must also be notified if the shacks do not comply with building regulations. Action can later be taken against the municipality if they fail to perform their duty. Proactive patrolling of public areas by neighbourhood watches, amongst others, can reduce the likelihood of occupation of public land.

Record-keeping

It is important to keep an accurate record of all incidents:

- Name of incident
- Place
- Time
- Date
- Description of events (telephone calls, radio messages, etc.)
- Photos (correct date and time should ideally appear on it)
- Videos (correct date and time should ideally appear on it).

Conclusion

Property rights are the cornerstone of a stable social, economic and political environment. The increasing threats of land occupation should be taken very seriously. We must develop the ability to protect our own property rights and the property rights of other persons and communities. This can be achieved only by acting in a responsible manner as organised communities.



SPECIAL POWER OF ATTORNEY

I/we, the undersigned,

_____ (ID: _____)

and (if applicable)

_____ (ID: _____)

IN MY/OUR CAPACITY AS OWNER OF THE IMMOVABLE PROPERTY KNOWN AS: _____

do hereby nominate, constitute and appoint

_____ (ID: _____)

With address _____

with the power of substitution, to be my agent in my name, place and stead,

to be in control of my/our above-mentioned property, and to do anything he/she sees fit to safeguard the best interests of the said property, which includes, but is not limited to, the protection of the property by way of pressing charges at the police station and/or any other forum he/she deems necessary, and to do everything in connection therewith as if I/we had done so myself/ourselves, more specifically to sign all documents in respect thereof and to perform all other functions in order to tend to the safety and well-being of the said property and generally for effecting the purposes aforesaid, to do or cause to be done whatsoever shall be required as fully and effectually, for all intents and purposes, as we/I might or could do if personally present and acting herein. I/we hereby ratify, allow and confirm all and whatsoever my said agent shall lawfully do, or cause to be done, by virtue of these presents.

Signed at _____ on this ____ day of _____, in the presence of the undersigned witnesses.

AS WITNESSES:

1. _____

2. _____

Name of owner

Signed at _____ on this ____ day of _____, in the presence of the undersigned witnesses.

AS WITNESSES:

1. _____

2. _____

Name of co-owner (if applicable)

A 1 STATEMENT

I, the undersigned, _____

(FULL NAMES AND SURNAME)

ID: _____

hereby state under oath as follows:

1. I am an adult male/female, occupation, in the employ of _____, situated at _____/self-employed, with place of business at _____, residing at _____, and confirm that I am authorised to depose of this affidavit.
2. The contents of this affidavit fall within my personal knowledge, and are true and correct unless explicitly stated otherwise.
3. I confirm that I am the registered owner/lawful occupier/person in charge of the immovable property known as _____.
4. On _____ at approximately _____ it came to my attention that people/a person, unknown to myself/known to myself as _____, have/has unlawfully entered onto my property as stated above. (Elaborate on how this information reached you, and what they are doing, always try to confirm the information mentioned yourself by going to the property if possible. Alternatively, take the person/s who notified you and personally saw the people on the property with you to the police station to make a confirmatory statement that it was indeed he/she who gave you the information. If the person/s mentioned is/are not available, then simply state that person's/persons' details in this affidavit.)
5. I never gave the above-mentioned person/s any permission to enter onto my property, and I am not aware of any legal reason that would justify the person's/persons' presence on the property.
6. I submit that the criminal offence of trespassing has been committed and therefore request the South African Police Service to investigate the allegations I mentioned herein.
7. I will supplement my affidavit should I be required to do so.

DEPONENT

I hereby certify that the deponent has acknowledged that he/she knows and understands the contents of this affidavit, which was signed and sworn before me at _____ on this the ____ day of _____ 20____,

COMMISSIONER OF OATHS